

Agent, Fox, Kintner, Plotkin & Kahn

Federal Bar Building, 1815 H Street, N.W.  
Washington, D.C. 20006  
Telephone: (202) 857-6000  
Cable: ARFOX Telex: WU 892672 ITT 440266

John D. Hushon  
(202) 857-6290

RECORDATION NO. 12962

FEB 27 1981 - 2 15 PM  
INTERSTATE COMMERCE COMMISSION

No. FEB 27 1981  
Date.....  
Fee \$..50.00  
ICC Washington, D. C.  
K-058A088

February 27, 1981

*Counterpart - May Adams*

Secretary  
Interstate Commerce Commission  
Washington, D. C. 20423

Dear Madam:

We are enclosing for filing and recordation a Security Agreement and Chattel Mortgage duly executed by United States Trust Company of New York and Hillman Manufacturing Company, creating a security interest in certain railroad box cars as described therein. The railroad cars covered thereby were previously the subject of ICC Filings (Security Agreement -- ICC Recordation No. 10906, a Revolving Credit Agreement -- ICC Recordation No. 10906-A, and a First Amendment to Security Agreement -- ICC Recordation No. 10906-B) involving a different debtor. The secured party in those filings has released its security interest by a Release which has been submitted to you for filing today. Further description of this document which is being presented to you for filing and recordation follows:

RECEIVED  
FEB 27 2 08 PM '81  
I.C.C.  
FEE OPERATION BR.

*Counterpart*

Title of Document	Security Agreement and Chattel Mortgage
Filing Nos. of Documents previously filed for this collateral:	10906, 10906-A, 10906-B (Released)
Date of Filing:	October 19, 1979 December 14, 1979
Parties in Interest and their respective addresses:	Hillman Manufacturing Company P. O. Box 510 Brownsville, Pennsylvania 15417 ("DEBTOR")  and

Secretary  
Interstate Commerce Commission  
Page Two

United States Trust Company  
of New York  
45 Wall Street  
New York, New York 10005  
Attn: Nicholas P. Episcopia  
("SECURED PARTY")

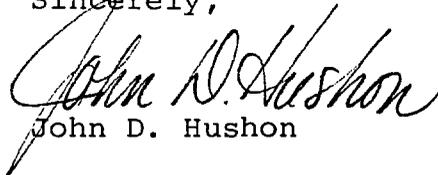
Description of  
Railroad Cars:

116 XM box cars bearing the  
boc car serial numbers con-  
tained in Exhibit B

We would appreciate your filing and date stamping the additional executed counterparts of this document, which are enclosed, and returning them to the undersigned. Our firm's check in the amount of the filing fee is enclosed.

The undersigned certifies that he is acting as counsel to Hillman Manufacturing Company, which is a party in interest in this document, that he has reviewed the enclosed document, and that the summary description thereof contained in this letter accurately reflects such release.

Sincerely,



John D. Hushon

Enclosures

Boxcar Serial Numbers

NSL 156142 - 156144 ✓

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NSL 157110 - 157159 ✓

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NSL 151637 ✓

NSL 156145 - 156148 ✓

PICK 081126 ✓

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NSL 151722 - 151723 ✓

NSL 151727 ✓

NSL 151741 - 151744 ✓

NSL 151746 ✓

NSL 156125 - 156126 ✓

PICK 209 - 216 ✓

PICK 081121 - 081122 ✓

PT 206099

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NSL 151740 ✓

NSL 151749 ✓

NSL 156127 - 156141

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PICK 96000 - 96018

**Interstate Commerce Commission**  
Washington, D.C. 20423

OFFICE OF THE SECRETARY

**John D. Hushon**  
Arent, Fox Kintner, Plotkin & Kahn  
Federal Bar Building  
1815 H. St. N. W.  
Washington, D. C.

Dear **Sir:**

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 2/27/81 at 2:15PM, and assigned re-  
recordation number(s). 12968

Sincerely yours,

*Agatha L. Mergenovich*  
Agatha L. Mergenovich  
Secretary

Enclosure(s)

12968

REGISTRATION NO. .... Filed 1425

FEB 27 1981 -2 15 PM

INTERSTATE COMMERCE COMMISSION

SECURITY AGREEMENT AND CHATTEL MORTGAGE

THIS SECURITY AGREEMENT AND CHATTEL MORTGAGE dated February<sup>27</sup>, 1981 between United States Trust Company of New York, a New York corporation (the "Lender"), and Hillman Manufacturing Company, a Pennsylvania corporation (the "Debtor");

W I T N E S S E T H :

WHEREAS, Lender and Debtor have entered into a Finance Agreement (the "Finance Agreement", capitalized terms not otherwise defined herein having the meaning assigned therein) dated as of December 31, 1980 (a copy of the form of which Finance Agreement without the Schedules thereto is attached hereto as Exhibit A) providing, inter alia, for Lender to sell to Debtor and Debtor to purchase from Lender 116 70-ton 50' 6" rigid underframe, single sheaved, AAR mechanical designation class XM railroad boxcars (the "Boxcars") bearing the road numbers set forth in Exhibit B hereto and for Debtor to make certain payments of the purchase price to Lender as evidenced by Debtor's promissory note (the "Note") payable to Lender's order in the original principal amount of \$4,512,400, plus such amounts as may be set forth in any allonge thereto; and

WHEREAS, to induce Lender to sell the Boxcars to Debtor and to induce Lender to extend credit to Debtor under the Finance Agreement, Debtor has agreed to grant Lender a security interest in and lien on the Boxcars, prior to any other security interest or lien perfected by filing under the Interstate Commerce Act or the Uniform Commercial Code, to secure Debtor's obligations hereunder and under the Finance Agreement and the Note,

NOW, THEREFORE, in consideration of the foregoing and the covenants herein contained, the parties agree as follows:

1. Grant of Security Interest in Collateral.

(a) As security for the payment in full by Debtor of the Note, and all other amounts now or hereafter owing by Debtor to Lender hereunder or under the Finance Agreement, and the performance of all other obligations of the Debtor hereunder and under the Finance Agreement (whether recourse or non-recourse) (all such credit amounts and other obligations being herein called "Obligations"), but subject to Section 2 hereof, Debtor hereby grants to Lender a continuing security interest in and lien upon, and hereby mortgages, assigns and pledges to Lender, the following described property, whether now existing or hereafter acquired and wherever located: (herein collectively called the "Collateral"):

(i) the Boxcars and all accessories, equipment, parts and appurtenances appertaining or attached to any of the Boxcars, and all substitutions, renewals or replacements of and additions, improvements, accessions and accumulations to any and all of the Boxcars, together with all the rents, issues, income, profits and avails therefrom;

(ii) all of Debtor's right, title and interest in, to and under any leases (the "Leases") to which the Boxcars may now or hereafter be subject, including, without limitation:

(a) the immediate and continuing right to receive all rents, payments and indemnities under the Leases;

(b) upon the lessee's failure to make any payment or perform any required act under any Lease the right to make such payment or perform such act;

(c) the right to declare an event of default or default under any Lease; and

(d) the right to take such action upon the occurrence of an event of default or default under any Lease or an event which with notice or lapse of time or both would become an event of

default or default under any Lease, including the commencement, conduct and consummation of legal, administrative or other proceedings as shall be permitted by any Lease or by law, and to do any and all other things whatsoever that Debtor is or may be entitled to do under the Lease upon such occurrence.

(iii) all of the proceeds and products of any of the foregoing;

it being the intention of Debtor to subject the Collateral to the security interest of this Agreement without the necessity of any further act by the parties hereto. It is expressly agreed that anything herein to the contrary notwithstanding, Debtor shall perform all of its obligations under any Lease in accordance with and pursuant to the terms and provisions thereof, and, except as otherwise set forth in Sections 13 and 15 hereof, Lender shall not be required or obligated in any manner to perform or fulfill any obligations of Debtor under or pursuant to any Lease or to make any payment or to make any inquiry as to the nature or sufficiency of any payment received by Lender or for its account hereunder, or present or file any claim, or take any action to collect or enforce the payment of any amounts which may have been assigned to Lender or to which Lender may be entitled at any time or times. Notwithstanding anything to the contrary contained herein, this mortgage shall not apply to, and Lender shall have no rights or interests of any kind in, amounts allocated to Debtor pursuant to Sections 2(b)(i) and (iv) of the Finance Agreement, it being understood, however, that such allocations will not remain in effect with respect to revenue generated after the occurrence and during the continuance of an Event of Default.

(b) Lender shall have and hold the Collateral forever; provided, always, however, that the security interest granted hereby is granted upon the express condition that if Debtor shall pay or cause to be paid all the Obligations then these presents and the estate hereby granted and conveyed shall cease and this Agreement shall become null and void. Lender, if so requested by Debtor at that time, at the expense of Debtor, will execute and deliver written evidence, in a form satisfactory for filing, recording or depositing in all necessary public

offices, such instrument or instruments as may be presented to it by Debtor and as may be necessary or appropriate in order then to make clear upon the public records the termination and release of all of the right, title and interest of Lender in and to the Boxcars and the other Collateral.

2. Lender's Rights in Respect of the Collateral. In furtherance of the provisions of Section 1 hereof, Lender shall, upon the occurrence and during the continuance of an Event of Default, have the right to collect and receive all rents, payments and indemnities in respect of the Collateral payable to Debtor at all times during the period from and after the date of this Agreement until the Obligations have been fully paid and discharged and to exercise all rights of Debtor with respect to the Leases, it being understood that, notwithstanding anything herein to the contrary, so long as an Event of Default shall not have occurred and be continuing, Debtor shall be entitled to the possession and use of the Boxcars, the right to collect and receive all rents and payments in respect of the Collateral, and the possession of the other Collateral and the use thereof, but only upon and subject to all the terms and conditions of this Mortgage and the Finance Agreement. Debtor may lease the Boxcars to any lessee as contemplated herein and in the Finance Agreement; provided, however, that Debtor shall not enter into any Lease of the Boxcars unless (i) Lender shall, in its reasonable discretion in view of its commercial and business interests, have consented in writing to such Lease (hereinafter called an "Approved Lease") or (ii) such Lease provides that the rights of the lessee and its permitted assigns and sublessees under such Lease shall be subordinated and junior in rank to the rights, and shall be subject to the remedies, of Lender under this Mortgage.

3. Maintenance, Location and Use of the Boxcars. Debtor, at its own expense, will maintain, service and repair the Boxcars (or cause the same to be maintained, serviced and repaired), to the extent necessary to maintain the Boxcars in good repair, working order and operating condition, ordinary wear and tear excepted, eligible for railroad interchange in accordance with the rules of the Association of American Railroads, and in compliance with any applicable requirements of law

or of any governmental authority having jurisdiction (regardless of which person such requirements shall, by their terms, be nominally imposed upon). Debtor, to the best of its ability, will not permit the Boxcars to be used or operated in violation of any law, or of any rule, regulation or order of any governmental authority having jurisdiction. Debtor, to the best of its ability, will not permit the percentage usage of Boxcars located in jurisdictions other than the United States of America to exceed 20% at any time.

4. Prohibition Against Liens. Debtor will pay or discharge any and all sums claimed by any party from, through or under Debtor or its successors or assigns which, if unpaid, might become a lien, charge or security interest on or with respect to any Boxcar, or Debtor's interests in any Lease and the payments to be made thereunder, equal or superior to Lender's security interest therein, and will not create, suffer or permit to exist any such lien, charge or security interest, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal or administrative proceedings in any reasonable manner and the nonpayment thereof does not, in the reasonable opinion of Lender, adversely affect the security interest of Lender in or to any Boxcar or otherwise under this Agreement. This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent, or undertermined or inchoate materialmen's, mechanic's, workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent.

5. Insurance.

(a) Debtor will, at its own cost, maintain or cause to be maintained, with financially sound and reputable insurers acceptable to Lender, insurance policies insuring against loss or damage to the Boxcars in an amount not less than \$1,000,000 per occurrence, subject to a deductible not in excess of \$5,000 per Boxcar or, in the case of earthquake or flood, \$25,000.

(b) Debtor will, at its own cost, maintain or cause to be maintained, with financially sound and

reputable insurers acceptable to Lender, property damage insurance applicable to the Boxcars in amounts which shall be not less than \$5,000,000 per occurrence (which shall include coverage of the Boxcars) subject to a deductible not in excess of \$50,000.

(c) all insurance policies required by this section shall name Lender as an additional insured with respect to the Boxcars. Such insurance policies shall be made payable to Lender under a standard mortgagee loss payable clause satisfactory to Lender (unless and until this Agreement shall have been terminated) and shall insure Lender's interests regardless of any breach or violation by Debtor of any warranties, declarations or conditions contained in such policies. Such policies shall provide that no termination or expiration of or change therein shall be effective as to Lender unless Lender has been given at least 30 day's prior written notice thereof. Debtor will deliver to Lender a copy of each insurance policy obtained by it to comply with this Section, or a certificate thereof issued by the insurers thereunder or their duly authorized agents. Not less than ten days prior to the expiration date of each expiring policy theretofore delivered pursuant to this Section, Debtor will deliver to Lender copies of all renewal policies or new policies of insurance (or certificates thereof issued by the insurers thereunder or their duly authorized agents) demonstrating that Lender is in compliance with the provisions of this Section 5; provided, however, that if the delivery of any formal policy or certificate, as the case may be, shall be delayed, Debtor will deliver an executed binder with respect thereto and will deliver the formal policy or certificate, as the case may be, promptly after receipt thereof.

(d) In the event that any Boxcar is lost or destroyed Debtor shall, at its option, acquire a replacement Boxcar of the same type and value and subject it to this Mortgage or make a prepayment on the Note at a rate of \$38,900 for each Boxcar lost or destroyed plus a proportionate share of Transaction Expenses in excess of \$3,000 per Boxcar and less a proportionate share of any prepayment.

6. Events of Default; Remedies. If any Event of Default (as defined in the Finance Agreement) shall

occur and be continuing, Lender may, by notice to Debtor, declare the full unpaid principal of and Current and Accrued Interest on the Note and all other obligations of Debtor thereunder and under the Finance Agreement to be immediately due and payable, whereupon such amounts shall be immediately due and payable, without presentment, demand, protest or other formalities of any kind, all of which are hereby expressly waived by Debtor, and Debtor agrees to pay the same. Without limiting the generality of the foregoing, Lender shall have the rights of a secured creditor after default under the Uniform Commercial Code and, again without limiting the generality of the foregoing, Lender may exercise any one or more of the following remedies:

(i) Lender personally or by agents or attorneys shall have the right (subject to compliance with any applicable mandatory legal requirements) to take immediate possession of the Collateral, or any portion thereof, and for that purpose may pursue the same wherever it may be found; provided, however, so long as no default or event of default has occurred and is continuing under any Approved Lease, the lessee under such Approved Lease shall be entitled to the continued use and possession of the Boxcars covered thereby. Debtor also agrees to reimburse Lender for costs and expenses reasonably incurred by Lender in marshalling or storing the Boxcars after an Event of Default.

(ii) Lender may at any time after the Note has been declared to be immediately due and payable, if at the time such action may be lawful and always subject to compliance with any mandatory legal requirements, either with or without taking possession and either before or after taking possession, and without instituting any legal proceedings whatsoever, and having first given notice of such sale by registered mail to Debtor once at least ten days prior to the date of such sale, and any other notice which may be required by law, sell or dispose of the Collateral, or any part thereof, at public or private auction, in one lot as an entirety or in separate lots, and either for cash or on credit and on such terms as Lender may determine, and at any place (whether or not it be the location of the

Collateral or any part thereof) designated in the notice above referred to; provided, however, that in the event that such Collateral is subject to an Approved Lease under which no default or event of default has occurred and is continuing, any such sale shall be subject to the rights of the lessee under such Approved Lease; and provided further, however, that any such sale shall be held in a commercially reasonable manner. Any such sale or sales may be adjourned from time to time by announcement at the time and place appointed for such sale or sales, or for any such adjourned sale or sales, without further published notice, and Lender may bid and become the purchaser at any such sale.

(iii) Lender may proceed to protect and enforce this Agreement, the Finance Agreement and the Note by suit or suits or proceedings in equity, at law or in bankruptcy, and whether for the specific performance of any covenant or agreement herein contained or in execution or aid of any power herein granted, or for foreclosure hereunder, or for the enforcement of any other proper legal or equitable remedy available under applicable law.

For the sole purpose of exercising its rights herein enumerated, Lender is authorized, after the occurrence and during the continuance of an Event of Default, in its own name or in the name of Debtor, to do all things with reference to any Lease that Debtor could do or might have done but for this Agreement. Also for the sole purpose of exercising Lender's rights herein enumerated, Debtor hereby irrevocably constitutes and appoints Lender, after the occurrence and during the continuance of an Event of Default, acting by any officer or agent, its true and lawful attorney with power to sign the name of Debtor to all checks, drafts, evidences of indebtedness and instruments for the payment of rents or other sums received in connection with any Lease or representing any dividend or other distribution in respect of the Collateral and to give receipts in respect of such rents or other sums so received; to endorse, assign, or otherwise transfer any evidence of right, title or interest in and to the Boxcars; to adjust, settle and collect any insurance maintained by Debtor or any lessee on all or any portion of the Collateral; to exercise all rights, options and

remedies of Debtor in connection with any Lease; and to execute all documents and do all other acts and things which Lender deems appropriate in connection with the enforcement and preservation of its rights hereunder and under any Lease.

7. Waiver by the Debtor. To the extent permitted by law, Debtor covenants that it will not at any time insist upon or plead, or in any manner whatever claim or take any benefit or advantage of, any stay or extension permitted by law now or at any time hereafter in force, nor claim, take nor insist upon any benefit or advantage of or from any law now or hereafter in force providing for the valuation or appraisal of the Collateral or any part thereof, prior to any sale or sales thereof to be made pursuant to any provision contained in Section 6 hereof, or to the decree, judgment or order of any court of competent jurisdiction; nor, after such sale or sales, claim or exercise any right under any statute now or hereafter made or enacted by any state or otherwise to redeem the Collateral so sold or any part thereof, and, to the full extent legally permitted, hereby expressly waives for itself and on behalf of each and every person, except decree or judgment creditors of Debtor acquiring any interest in or title to the Collateral or any part thereof subsequent to the date of this Agreement, all benefit and advantage of any such law or laws, and covenants that it will not invoke or utilize any such law or laws or otherwise hinder, delay or impede the execution of any power herein granted and delegated to Lender, but will suffer and permit the execution of every such power as though no such power, law or laws had been made or enacted.

8. Effect of Sale. Any sale, whether under any power of sale hereby given or by virtue of judicial proceedings, shall operate to divest all right, title, interest, claim and demand whatsoever, either at law or in equity, of Debtor in and to the Collateral sold and shall be a perpetual bar, both at law and in equity, against Debtor, its successors and assigns, and against any and all persons claiming the Collateral sold or any part thereof under, by or through Debtor, its successors or assigns, except the right to the possession and use of the Boxcars of any lessee under an Approved Lease so long as no event of default or default exists thereunder.

9. Application of Sale Proceeds. The proceeds an/or avails of any sale of the Collateral, or any part thereof, and the proceeds and the avails of any remedy hereunder shall be paid to and applied as follows:

(a) First, to the payment of costs and expenses (including marshalling, storage and refurbishment costs, if any) of foreclosure or suit, if any, and of such sale, and of all proper expenses, liabilities and advances, including legal expenses and attorneys' fees, incurred or made in connection therewith by Lender, and of all taxes, assessments or liens superior to the security interest of this Agreement, except any taxes, assessments or other superior liens subject to which said sale may have been made;

(b) Second, to the payment of all amounts then due and payable on account of the Note for application to principal and interest in such manner as Lender shall in its sole discretion determine;

(c) Third, to the payment of all other amounts then due in respect of the Obligations; and

(d) Fourth, after payment in full of all of the Obligations to the payment of the surplus, if any, to Debtor, its successors and assigns, or to whomsoever may be lawfully entitled to receive the same.

10. Private Sale. Lender shall incur no liability as a result of the sale of the Collateral, or any part thereof, at any private sale. Debtor hereby waives, subject to such sale being held in a commercially reasonable manner, any claims against Lender arising by reason of the fact that the price at which the Collateral may have been sold at such a private sale was less than the price which might have been obtained at a public sale or was less than the aggregate amount of the Note, even if Lender accepts the first offer received and does not offer the Collateral to more than one offeree.

11. Discontinuance of Remedies. In case Lender shall have proceeded to enforce any right under this Agreement by foreclosure, sale, entry or otherwise, and such proceedings shall have been discontinued or abandoned

for any reason or shall have been determined adversely, then and in every such case Debtor and Lender shall be restored to their former positions and rights hereunder with respect to the Collateral subject to the security interest created under this Agreement.

12. Further Assurances. Debtor agrees that, from time to time upon the written request of Lender, it shall execute and deliver such further documents and do such other acts and things as Lender may reasonably request in order fully to effect the purposes of this Agreement and cause Lender to have a first perfected security interest in the Collateral (including without limitation Debtor's interest in any leases). Without limiting the foregoing, Debtor will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Boxcar, in letters not less than one inch in height the words "OWNERSHIP SUBJECT TO A SECURITY AGREEMENT FILED UNDER THE INTERSTATE COMMERCE ACT, SECTION 11303", or other appropriate words designated by Lender, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect Lender's interest in the Boxcars and its rights under this Agreement; provided, however, that such marking need not be accomplished until six months after the Closing Date.

13. Debtor to Remain Liable. Notwithstanding any provision of this Agreement to the contrary (except as hereinafter in this Section 13 provided), Debtor shall remain liable under all Leases to perform all of its obligations to the lessees thereunder, and the exercise by Lender of any of the rights or remedies under any Lease or otherwise in respect of the Collateral, while an Event of Default is continuing shall not release Debtor from any such obligations except to the extent that such exercise by Lender shall constitute performance of such obligations; provided, however, that Debtor shall not remain liable to perform its obligations to lessees (which obligations will be performed by Lender) under (i) any Approved Lease after such time as an Event of Default has occurred and Lender has taken action to cause the Financed Amount to become immediately due and payable or has exercised any other remedy available to it upon such occurrence or (ii) any other Lease after Lender has taken any such action until such time as Lender exercises its

right (as is required to be provided in such Leases pursuant to Clause (ii) of Section 2 hereof) to terminate such Lease and take control of the Boxcars as a result of such Event of Default.

14. Miscellaneous.

(a) All notices and communications hereunder shall be deemed to have been given or made at the earlier of actual receipt or refusal of delivery when sent by certified mail, return receipt requested, or, in the case of telex, when dispatched, and addressed, as to any party, to it at its address set forth in the signature page hereof.

(b) Upon payment in full and discharge of all of the Obligations, this Agreement and the security interest and lien created hereby shall terminate and be of no further force and effect.

(c) This Agreement shall be governed by and construed in accordance with the laws of the State of New York; provided, however, that the parties hereto shall be entitled to all rights conferred by 49 U.S.C. §11303.

(d) This Agreement shall be binding upon and inure to the benefit of Debtor and Lender and their respective successors and, in the case of Lender, assigns.

(e) Lender shall release this Agreement and the security interest ganted hereby by proper instrument or instruments upon presentation of reasonably satisfactory evidence that the Obligations have been fully paid or discharged. In addition, as to any Boxcar which is lost or destroyed and as to which a prepayment has been made as contemplated by Section 5(d) hereof, Lender shall, if requested by the purchaser of such Boxcar, release such Boxcar from the security interest created hereby.

(f) The Debtor shall pay all costs of collection and enforcement (including attorney's fees) in case default is made in the performance or observance of any of its obligations hereunder, under the Finance Agreement or under the Note.

15. Notwithstanding anything to the contrary contained herein, except as otherwise in this Section 15

provided, it is understood and agreed that all of the obligations of Debtor contained herein are non-recourse obligations of Debtor, may be asserted only against the Collateral and may not be asserted against Debtor personally (it being understood, however, that, if and to the extent necessary under applicable law in connection with the assertion by Lender of its rights against the Collateral, Lender may make assertions against Debtor but will not under any circumstances, except as set forth below, seek to recover any sum from Debtor or its assets) or against any incorporator, shareholder, officer or director of Debtor provided, however, that Debtor shall be liable on a recourse basis for any harm or loss suffered by Lender on account of any breach of its covenants and agreements contained in sections 3, 4, 5, 12 and 13 (subject to the proviso contained therein) hereof.

IN WITNESS WHEREOF, the parties hereto have caused this Security Agreement and Chattel Mortgage to be duly executed as of the day and year first above written.

HILLMAN MANUFACTURING COMPANY

Hillman Manufacturing Company  
P.O. Box 510  
Brownsville, Pennsylvania 15417  
Attn: Secretary

(with a copy to):

Operating Lease Services, Inc.  
c/o Gollust & Tierney, Inc.  
30 Rockefeller Plaza  
Suite 4510  
New York, New York 10020  
Attn: Paul E. Tierney, Jr.

By Stan N. Hill  
WP

UNITED STATES TRUST COMPANY  
OF NEW YORK

45 Wall Street  
New York, New York 10005  
Attention: Nicholas P. Episcopia

By Nicholas P. Episcopia VP.

STATE OF New York )  
 ) : ss.:  
COUNTY OF New York )

On the 20<sup>th</sup> day of February, 1981, before me personally came Nicholas P. Episcopia, to me known, who, being by me duly sworn, did depose and say that he/~~she~~ resides in 38 Claydon Road, Garden City, N.Y. 11530; that he/~~she~~ is Vice President of United States Trust Company of New York, the corporation described in and which executed the above instrument; that he/she knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he/she signed his/her name thereto by like order.

Carlos R. Camacho  
Notary Public

CARLOS R. CAMACHO  
NOTARY PUBLIC, STATE OF NEW YORK  
No. 4680847, Qualified in New York Co.  
Commission Expires March 30, 1982

(Notarial Seal)

COMMONWEALTH

STATE OF PENNSYLVANIA )  
 ) : ss.:  
COUNTY OF ALLEGHENY )

On the 24<sup>th</sup> day of FEBRUARY, 1981, before me personally came STEVEN N. HUTCHINSON, to me known, who, being by me duly sworn, did depose and say that he/~~she~~ resides in PITTSBURGH, PENNSYLVANIA; that he/~~she~~ is VICE PRESIDENT of Hillman Manufacturing Company, the corporation described in and which executed the above instrument; that he/she knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he/she signed his/her name thereto by like order.

Deborah A. Fitzgerald  
Notary Public

DEBORAH A. FITZGERALD, Notary Public  
Allegheny County, PA  
My Commission Expires August 23, 1982

(Notarial Seal)

FINANCE AGREEMENT

Agreement dated as of December 31, 1980 between United States Trust Company of New York, a New York corporation (the "Bank"), and Hillman Manufacturing Company, a Pennsylvania corporation (the "Borrower").

W I T N E S S E T H:

WHEREAS, on the Closing Date, as defined below, the Bank will be the owner of 116 70-ton 50'6" rigid underframe, single sheaved, AAR Mechanical designation XM railroad boxcars (the "Boxcars") bearing the road numbers set forth in Schedule A hereto; and

WHEREAS, the Bank wishes to sell the Boxcars to the Borrower for a price of \$42,900 per Boxcar, or an aggregate price of \$4,976,400, a portion of which price will be loaned by the Bank to the Borrower on the terms and conditions set forth herein (such loan to be evidenced by a Promissory Note (the "Note") in substantially the form of Schedule B hereto), and the Borrower wishes to acquire the Boxcars, all on the terms and conditions set forth herein; and

WHEREAS, to secure, inter alia, the amount which the Bank will lend to the Borrower to pay for the Boxcars, the Bank will retain a lien on and security interest in the Boxcars, prior to any other lien or security interest perfected by filing under the Interstate Commerce Act or the Uniform Commercial Code, pursuant to a Security Agreement and Chattel

Mortgage (the "Mortgage") between the Borrower and the Bank in substantially the form annexed hereto as Schedule C,

NOW, THEREFORE, in consideration of the foregoing and of the covenants herein contained, the parties agree as follows:

1. (a) On such date (the "Closing Date") as the Bank and the Borrower may agree upon, but in any event by June 30, 1981, the Bank will sell the Boxcars, together with all of the Bank's rights in, to and under the bill of sale received from the manufacturer (the "Manufacturer") of the Boxcars, to the Borrower pursuant to a bill of sale (the "Bill of Sale") in substantially the form annexed hereto as Schedule D, and the Borrower agrees to accept all such Boxcars conforming to the warranties and specifications set forth in the bill of sale received by the Bank from the Manufacturer and conforming to the warranties and specifications in the Bill of Sale. The Boxcars will be accepted by the Borrower as is and at their locations on the Closing Date (current locations are shown on Schedule A), and the Bank agrees not to cause any change in the location of the Boxcars without the prior consent of the Borrower.

(b) IT IS UNDERSTOOD AND AGREED THAT THE BANK SHALL NOT BE DEEMED TO HAVE MADE AND DOES NOT MAKE ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AS TO THE VALUE, CONDITION, DESIGN, OPERATION, MERCHANTABILITY OR FITNESS FOR USE OF ANY OF THE BOXCARS, OR ANY OTHER REPRESENTATION OR WARRANTY WHATSOEVER WITH RESPECT TO ANY OF THE BOXCARS, EXPRESS

OR IMPLIED, ALL OF WHICH ARE HEREBY DISCLAIMED, EXCEPT AS SET FORTH IN SECTIONS 3(b) OR 6 HEREOF OR IN THE BILL OF SALE.

(c) Except as set forth in Section 7, all storage, insurance (if paid for by the Bank) and maintenance charges with respect to the Boxcars sold to the Borrower incurred on and after December 31, 1980 shall be borne by the Borrower. All such charges accrued through December 31, 1980 shall be borne by the Bank.

2.(a) As payment for the Boxcars, the Borrower will pay to the Bank on the Closing Date in immediately available funds the sum of \$464,000, or \$4,000 per Boxcar, and the Borrower agrees to pay to the Bank on December 31, 1988 the principal sum of \$4,512,400, or \$38,900 per Boxcar, together with any amounts advanced in accordance with Section 7 (such sum, as increased by the amount of any such advances pursuant to Section 7, is hereinafter referred to as the "Financed Amount"). The Borrower also agrees to pay interest (computed on the basis of a year of 360 days consisting of twelve 30-day months) at a rate equal to 11% per annum on the unpaid amount of the Financed Amount; provided, however, that such interest payments shall be made only in the event that sufficient revenue is generated and received from the use of the Boxcars as set forth in Section 2(b). Such interest payments in accordance with Section 2(b) shall be made quarterly on the last day of March, June, September and December in each year (or the next business day if such day is not a business day), commencing March 31, 1981, until payment in full.

(b) All revenue generated and received by the Borrower because of the ownership, leasing or operation of the Boxcars shall be paid over by the Borrower after the receipt thereof in accordance with the following schedule:

(i) First, to pay (or to reimburse the Borrower for the prior payment of) all reasonable out-of-pocket direct expenses actually incurred by the Borrower in connection with the ownership, leasing and operation of the Boxcars ("Operating Expenses") and not included in the Financed Amount, it being understood that such expenses will not include any management fees payable to or for the Borrower or Operating Lease Services, Inc. or any affiliate of either or any allocation of indirect or administrative expenses.

(ii) Second, for each calendar quarter, revenue received in excess of Operating Expenses shall be used to pay interest payable on account of the Financed Amount during that quarter ("Current Interest").

(iii) Third, to pay Accrued Interest, as defined below. If during any calendar quarter, beginning January 1, 1982, the allocation to Current Interest as set forth above is insufficient to pay the Current Interest due for such quarter, then any unpaid Current Interest shall be credited to an account which shall be called "Accrued Interest"; provided, however, that if with respect to any calendar quarter the Accrued Interest remains unpaid at December 31 of the next succeeding calendar year, such amount shall then be deducted from the Accrued Interest account, and payment of such amount shall be deferred to December 31, 1988.

(iv) Fourth, the balance to be retained by the Borrower.

Current Interest for all periods ending on or prior to December 31, 1981, to the extent unpaid because sufficient revenue to make payment thereof is not generated and received pursuant to clauses (i) and (ii) above, will be forgiven on December 31, 1981. Any revenue received by the Borrower subsequent to December 31, 1988 on account of its ownership, leasing or

operation of the Boxcars prior to December 31, 1988 shall be applied in the order set forth in clauses (i) through (iv) above.

(c) In no event shall the Bank repay Current Interest or Accrued Interest previously paid to it.

(d) The Borrower may prepay the Financed Amount, at any time or from time to time, in whole or in part and without premium. At the time of any such prepayment the Borrower shall also pay the Current and Accrued Interest on the amount prepaid through the date of payment.

(e) The Borrower agrees to attempt to collect revenues owing to it in connection with its ownership, leasing or operation of the Boxcars in the same manner as it attempts to collect other revenues owing to it in the ordinary course of its business.

3.(a) In order to induce the Bank to enter into this Agreement, the Borrower represents and warrants that:

(i) The Borrower is a corporation duly incorporated and validly existing in good standing under the laws of the State of Pennsylvania and has full power and authority to own its property and conduct its business as now conducted;

(ii) The Borrower has full power, right and legal authority to execute and deliver, and to perform its obligations under, this Agreement, the Mortgage and the Note and has taken all action necessary to authorize such execution, delivery and performance. This Agreement, the Mortgage (when executed) and the Note (when executed) each constitutes (or will constitute) a legal, valid and binding obligation of the Borrower, enforceable against it in accordance with their respective terms. No consent of or notice to any person, and no consent, license, approval or authorization of, or registration or declaration with, any governmental authority, bureau or agency, is required in connection with the execution, delivery or performance by the Borrower of this Agreement, the Mortgage or the Note, except as set forth in Section 3(a)(vi);

(iii) Neither the execution, delivery or performance by the Borrower of this Agreement, the Mortgage or the Note will violate or contravene any provisions of any existing law or regulation, or any order or decree of any court, governmental authority, bureau or agency, or of the Certificate of Incorporation or of the By-Laws of the Borrower or of any mortgage, indenture, security agreement, contract, undertaking or other agreement or instrument to which the Borrower is a party or which is binding upon it or any of its property or assets, and the execution, delivery and performance by the Borrower of this Agreement, the Mortgage and the Note will not result in the creation or imposition of any lien, charge or encumbrance on, or security interest in, any of the properties of the Borrower pursuant to the provisions of any such mortgage, indenture, security agreement, contract, undertaking or other agreement or instrument;

(iv) The Borrower is not in default in the payment or performance of any of its material obligations for the payment of money, and no event specified in subsection 5(e), whether or not any requirement for notice or lapse of time, or both, or any other condition has been satisfied, has occurred and is continuing with respect to the Borrower;

(v) As of the date hereof the Borrower has tangible net worth, determined in accordance with generally accepted accounting principles, of at least \$5 million; and

(vi) Assuming that (a) the Bank sells the Boxcars free and clear of all claims, liens, security interests and encumbrances of any kind, except those granted by the Borrower to the Bank pursuant to this Agreement and the Mortgage and except those arising by, through or under the Borrower and (b) on the Closing Date the Mortgage has been duly filed with the Interstate Commerce Commission and Uniform Commercial Code financing statements have been filed in some or all of the states where the Boxcars are located, the effect of such Mortgage and filing(s) will be to create for the benefit of the Bank a valid and perfected security interest in and lien on the Boxcars, prior to any other security interest or lien perfected by filing under the Interstate Commerce Act or the Uniform Commercial Code, as security for the Obligations (as defined in the Mortgage).

(b) In order to induce the Borrower to enter into this Agreement, the Bank represents and warrants that:

(i) The Bank is a corporation duly incorporated and validly existing in good standing under the laws of the

State of New York and has full power and authority to own its property and conduct its business as now conducted;

(ii) The Bank has full power, right and legal authority to execute and deliver, and to perform its obligations under, this Agreement, the Bill of Sale and the Mortgage and has taken all action necessary to authorize such execution, delivery and performance. This Agreement, the Bill of Sale and the Mortgage each constitutes (or will constitute) a legal, valid and binding obligation of the Bank, enforceable against it in accordance with their respective terms. No consent of or notice to any person, and no consent, license, approval or authorization of, or registration or declaration with, any governmental authority, bureau or agency, is required in connection with the execution, delivery or performance by the Bank of this Agreement, the Bill of Sale or the Mortgage;

(iii) Neither the execution, delivery or performance by the Bank of this Agreement, the Bill of Sale or the Mortgage will violate or contravene any provisions of any existing law or regulation, or any order or decree of any court, governmental authority, bureau or agency, or of the Charter or of the By-Laws of the Bank or of any mortgage, indenture, security agreement, contract, undertaking or other agreement or instrument to which the Bank is a party or which is binding upon it or any of its property or assets, and the execution, delivery and performance by the Bank of this Agreement, the Bill of Sale or the Mortgage will not result in the creation or imposition of any lien, charge or encumbrance on, or security interest in, any of the properties of the Bank pursuant to the provisions of any such mortgage, indenture, security agreement, contract, undertaking or other agreement or instrument.

4. The Borrower agrees that so long as any part of the Financed Amount or Accrued Interest remains unpaid it will:

(a) Furnish to the Bank a quarterly report of utilization of, and revenue generated, revenue received and expenses incurred in connection with, the Boxcars, in such reasonable detail as may be agreed upon between the Bank and the Borrower.

(b) Use every reasonable effort to place the Boxcars into profitable service so as to generate sufficient revenue to be able to make the payments of Current Interest on the Financed Amount required by Section 2 and not knowingly cause boxcars other than the Boxcars to be placed into revenue-generating service solely on account of the fact that Current Interest and Accrued Interest are

not payable on account of the Financed Amount unless revenue is generated from the Boxcars; it being acknowledged by the Bank that the Borrower may choose the boxcars to be placed into service in accordance with other business criteria, including without limitation, the types of boxcars available, their location and the lengths of available leases.

(c) Promptly give notice to the Bank of any Event of Default (as defined in Section 5) or any event which, with the lapse of time or the giving of notice or both, could become an Event of Default.

(d) Not become a party to any merger or consolidation unless the surviving corporation explicitly assumes the obligations of the Borrower hereunder, under the Mortgage and the Note, and unless the surviving corporation would be in compliance with Section 4(e).

(e) Maintain tangible net worth, determined in accordance with generally accepted accounting principles, at an amount at least equal to \$5 million.

5. Upon the occurrence of any of the following events (an "Event of Default"):

(a) Failure to pay the Financed Amount when due or failure to pay interest on the Financed Amount when and if required in accordance with Section 2(b) within five days after such payment is required;

(b) If any representation or warranty made by the Borrower in (i) this Agreement, (ii) any certificate, financial or other statement furnished at any time under or in connection with this Agreement or the Mortgage or (iii) in the Mortgage shall prove to have been untrue in any material respect on the date as of which made;

(c) Default by the Borrower in the observance or performance of any of the covenants and agreements contained in subsections 4(d) or (e) hereof or in the Mortgage;

(d) Default by the Borrower in the observance or performance of any covenant or agreement contained in this Agreement other than those specified in 5(a) or 5(c) above and the continuance of the same for 30 days after receipt by the Borrower of notice of such default from the Bank;

(e) If there shall be any failure on the part of the Borrower to pay full recourse obligations aggregating \$2 million or more under any agreements or evidences of indebtedness relating to any obligation of the Borrower

for borrowed money other than the Note which would give the holders thereof the right to declare such obligations due and payable, or if the Borrower shall fail to pay obligations for borrowed money when due aggregating \$2 million or more, unless any such failure shall be waived by the holder or holders of such indebtedness;

(f) Commencement or filing by the Borrower of a voluntary case or petition in bankruptcy or a voluntary petition or any answer seeking reorganization, arrangement, readjustment of its debts or for any other relief under the Bankruptcy Code, as amended, or under any other insolvency act or law, state or federal, now or hereafter existing, or any action by the Borrower indicating its consent to, approval of, or acquiescence in, any such case, petition or proceeding; the application by the Borrower for or the appointment by consent or acquiescence of a receiver, custodian, or trustee of the Borrower or for all or a substantial part of its property; the making by the Borrower of any assignment for the benefit of creditors; the inability of the Borrower, or the admission by the Borrower in writing of its inability to pay its debts as they mature;

(g) Commencement of an involuntary case or filing of an involuntary petition against the Borrower in bankruptcy or seeking reorganization, arrangement, readjustment of its debts or for any other relief under the Bankruptcy Code, as amended, or under any other insolvency act or law, state or federal, now or hereafter existing; or the involuntary appointment of a receiver, custodian, or trustee of the Borrower or for all or a substantial part of its property; or the issuance of a warrant of attachment, execution or similar process against any substantial part of the property of the Borrower; and the continuance of any such event for 60 days undismissed, unbonded or undischarged;

then, and in any such event, the Bank upon written notice to the Borrower may declare the Financed Amount, together with accrued interest, to be forthwith due and payable, whereupon the same shall forthwith become due and payable.

6(a)(i) Loss of Investment Tax Credit. This Finance Agreement has been entered into on the basis that the Borrower shall be entitled in the year in which the Closing Date occurs to an Investment Tax Credit under Sections 38 and 50 of the Internal Revenue Code of 1954 as currently enacted or subsequently amended (hereinafter called the "Code") with respect to the Boxcars in an amount equal to, at least \$4,290 per Boxcar, for which purpose the Bank confirms that on the Closing Date, the Boxcars will be new and unused, it being understood that, other than as is set forth below with respect to a Loss of Investment Credit, the Bank shall not be liable in any way for the inaccuracy of such confirmation. The Bank agrees to indemnify completely the Borrower against any disallowance, elimination, reduction, disqualification, loss, or recapture (including, without limitation, any and all Federal, State and local taxes, penalties or interest payable upon or as a result of any such disallowance, elimination, reduction, disqualification, loss or recapture), in whole or in part, of such Investment Tax Credit (hereinafter called "Loss of Investment Credit") for any reason whatsoever, except as otherwise set forth in Section 6(a)(v). The amount of any indemnification (hereinafter called "Tax Indemnification") payable pursuant to this Section 6(a) shall be determined pursuant to paragraph 6(a)(iii) hereof and shall be paid at the time specified in paragraph 6(a)(iv) hereof.

6(a)(ii) Proceedings prior to payment of Tax Indemnification. If at the conclusion of any audit of the Borrower by the Internal Revenue Service (the "Service"),

Borrower receives a preliminary or "30 day" letter from the Service proposing an adjustment in any item that, if agreed to by the Borrower, would result in a Loss of Investment Credit (a "Disallowance"), the Borrower shall promptly notify the Bank of such proposed adjustment and shall furnish to the Bank a statement describing such proposed adjustment in reasonable detail. If requested to do so by the Bank within 20 days after receipt of such statement, the Borrower shall promptly request from special tax counsel selected by the Borrower and reasonably acceptable to the Bank (the "Special Tax Counsel") their opinion as to whether there is a reasonable basis for contesting such proposed adjustment. If the opinion of Special Tax Counsel is to the effect that there is such a reasonable basis, the Borrower shall in good faith take such action in connection with contesting such proposed adjustment as the Bank shall reasonably request in writing from time to time. Notwithstanding the foregoing, the Borrower at its sole option may forego any and all administrative appeals, proceedings, hearings and conferences with the Service in respect of such claim and may, at its option, contest the proposed adjustment in any permissible forum (i.e., either an appropriate United States District Court, the United States Tax Court or the United States Court of Claims); provided, however, that the Borrower shall not be entitled to forego any such administrative appeals, proceedings, hearings or conferences with respect to such claim (whether or not execution of a waiver of the statute

of limitations will thereby be required) unless (i) there shall exist other matters being contested by Borrower in respect of the same taxable year, (ii) in the opinion of the Borrower's Director of Taxes or Chief Financial or Accounting Officer its ability to achieve a settlement (which does not have to be final) of any other material matters will be impaired by such an administrative appeal, proceeding, hearing or conference with respect to such claim and (iii) in the opinion of Special Tax Counsel there is a reasonable basis for the aforesaid opinion of the Borrower's Director of Taxes or Chief Financial or Accounting Officer. The Bank shall be notified of any administrative or judicial conference, hearing, appeal or other proceeding relating to any such Disallowance, shall be provided with any relevant information with respect thereto, and shall be provided with the opportunity to consult with the Borrower and its counsel in connection with any such conference, hearing, appeal or other proceeding and the submission of briefs and memoranda of law relating thereto. The Borrower shall not be required to take any action as set forth in this subsection 6(a) unless and until the Bank shall have agreed to payment of any Tax Indemnification that results from an adverse determination with respect to the Disallowance and shall have agreed to pay the Borrower on demand all reasonable out-of-pocket costs and expenses, including without limitation attorneys' fees and expenses, incurred by it in connection with the taking of such action. If the Borrower elects to pay taxes

based on a proposed deficiency and sue for a refund thereof, and if the proposed deficiency would constitute a Loss of Investment Tax Credit with respect to which the Bank would be required to indemnify the Borrower, then the Bank shall advance to the Borrower on an interest-free basis the amount of such taxes and interest thereon which the Borrower shall have elected to pay, and if the Borrower subsequently receives a refund of all or any part of such taxes and interest, it shall promptly pay to the Bank the amount of such refunded taxes and refunded interest, if any, plus the amount of any interest received by the Borrower from the United States Government with respect to such refunded taxes and refunded interest. Notwithstanding anything to the contrary contained in this subsection 6(a), the Borrower may at any time, whether before or after commencing to take any action with respect to a Disallowance, decline to take any further action with respect thereto, provided that the Borrower notifies the Bank that it waives its right to any Tax Indemnification that will result from acceptance of such Disallowance.

6(a)(iii) Amount of Tax Indemnification. The amount of any Tax Indemnification payable by the Bank to the Borrower as a result of a Loss of Investment Tax Credit shall be equal to the sum of (A) an amount which, after deduction of all taxes required to be paid by Borrower in respect of the receipt of such amount under the laws of any Federal, state or local government or taxing authority in the United States, shall be

equal to the sum of (1) the aggregate amount of additional Federal, state and local income taxes payable from time to time as a result of such Loss of Investment Tax Credit, plus (2) the aggregate amount of any interest, penalties or additions to tax payable by Borrower from time to time as a result of such Loss of Investment Tax Credit which are not deductible by Borrower for Federal income tax purposes less (3) the aggregate amount, if any, by which Borrower's Federal, state and local income taxes payable from time to time are reduced by such Loss of Investment Tax Credit, plus (B) the aggregate amount of any interest, penalties or additions to tax payable by the Borrower from time to time as a result of such Loss of Investment Tax Credit which are deductible by Borrower for Federal income tax purposes. However, due credit shall be given to the Bank for any amount advanced by the Bank to the Borrower pursuant to the penultimate sentence of paragraph 6(a)(ii), which is not repaid to the Bank pursuant to such sentence. The Borrower shall furnish the Bank with a notice setting forth in reasonable detail the computations and methods used in computing the amount of the Tax Indemnification payment.

6(a)(iv) Time for Payment of Tax Indemnification.

The amount of any Tax Indemnification shall be paid by the Bank to the Borrower upon the Borrower's demand (A) in the case of a Loss of Investment Credit that results from a Disallowance that is not contested pursuant to paragraph 6(a)(ii) hereof, 30 days after the Bank's receipt of the statement referred to in the

first sentence of paragraph 6(a)(ii) hereof or (B), in the case of a Loss of Investment Tax Credit that results from a Disallowance that is contested pursuant to paragraph 6(a)(ii) hereof, 30 days after the day on which such contest is finally concluded.

6(a)(v) Exceptions. Notwithstanding anything to the contrary set forth hereinabove, no amount shall be payable by the Bank as an indemnity under this section as a result of any of the following: (i) the failure of the Borrower to claim in a timely manner the investment tax credit; (ii) the failure of the Borrower to have sufficient liability for federal income tax against which to credit the investment credit; (iii) a change in the form or type of organization or the taxable status of the Borrower; (iv) casualty or theft of any Boxcar, if the Borrower shall have received all the insurance proceeds payable as a result of such casualty or theft; (v) the disposition by the Borrower of any Boxcar or of the interest of the Borrower in any Boxcar; (vi) any event of default as defined in Section 5 of this Agreement or (vii) the inability of the Borrower to include part or all of the Financed Amount in computing its basis (within the meaning of Code Section 46(c)(1)) for the Boxcars.

(b) The Bank and the Borrower respectively represent and warrant to each other that they have not incurred any brokerage or finders fees in connection with the transactions contemplated hereby, other than, on the part of the

Borrower, fees of not more than \$1,000 per Boxcar payable to Operating Lease Services, Inc. which the Borrower agrees to pay.

7. All direct expenses reasonably incurred by the Borrower in connection with the purchase, ownership, leasing and operation of the Boxcars prior to June 30, 1981 (other than management fees paid to the Borrower or Operating Lease Services, Inc. (excluding the \$1,000 per Boxcar to be paid to Operating Lease Services, Inc. as set forth below) or any affiliate of either), and all expenses incurred by the Bank in connection with the maintenance, storage and insurance of the Boxcars after December 31, 1980, shall be called "Transaction Expenses". Such expenses shall include, but not be limited to, inspection fees, transportation, remarking, storage, maintenance, insurance, property taxes and legal fees. The total of such Transaction Expenses is currently estimated to total \$3,000 per Boxcar, including \$1,000 per Boxcar payable to Operating Lease Services, Inc. If Transaction Expenses are less than \$3,000 per Boxcar the difference shall be reimbursed by the Borrower to the Bank as partial prepayment of the Financed Amount. If Transaction Expenses are greater than \$3,000 per Boxcar, any excess over \$3,000 per Boxcar shall be paid by the Bank to the Borrower on or after the Closing Date upon evidence of payment of such expenses by the Borrower and the Financed Amount shall be increased by the amount so paid. In such event the Borrower will execute an allonge to the Note showing the amount so paid by the Bank.

8.(a) All covenants, agreements, representations and warranties made herein and in any certificates delivered pursuant hereto shall survive the execution by the Borrower of this Agreement and delivery to the Bank of the Note and shall continue in full force and effect so long as any amount owed hereunder is outstanding and unpaid. The Borrower hereby agrees to indemnify the Bank against, and to hold the Bank harmless from, all liabilities, damages, losses, costs or expenses whatsoever arising from any breach or failure of performance of any covenant or warranty of the Borrower herein or any misrepresentation made by the Borrower herein or in connection herewith.

(b) Any indemnification payable by the Bank pursuant to Section 6(a) or on account of the breach of any representation or warranty in the Bill of Sale shall be payable by the Bank in the manner and in the order set forth below:

(i) in cash to the extent of the sum of (a) \$464,000, (b) the amount of Transaction Expenses actually incurred by the Borrower up to \$3,000 per Boxcar, (c) direct out-of-pocket expenses actually incurred by the Borrower in connection with the transactions contemplated hereby and not included in the Financed Amount and (d) any prepayments of the Financed Amount previously paid by the Borrower;

(ii) as a prepayment on the Financed Amount; and

(iii) in cash to the Borrower.

The Bank agrees to pay the Borrower interest (computed on the basis of a 360-day year consisting of twelve 30-day months) on any amounts payable under clause (i) at a rate equal to 11% per annum from the date such sums were expended by Borrower and clause (iii) at a rate equal to 11% per annum from the date such indemnification becomes payable.

(c) The Borrower will pay all reasonable out-of-pocket expenses (including reasonable counsel fees) incurred by the Bank in good faith in connection with any legal action reasonably instituted by the Bank to enforce and protect the rights of the Bank in connection with this Agreement, the Mortgage or Note.

(d) No modification or waiver of any provision of this Agreement, the Mortgage or the Note shall be effective unless the same shall be in writing and signed by the party against whom the same is asserted, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Neither any failure nor any delay on the part of the Bank in exercising any right, power or privilege hereunder or under the Note shall operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise or the exercise of any other right, power or privilege. No notice to or demand on the Borrower in any case shall entitle the Borrower to any other or further notice or demand in the same, similar or other circumstances.

(e) All notices hereunder shall be in writing and shall be conclusively deemed to have been received and shall be effective on personal delivery, on the day on which the same is transmitted by telex, telegram or telecopier, or three days after the same is deposited in the mail, and (except for personal delivery or telecopying) shall be addressed:

(i) in the case of the Borrower to:

Hillman Manufacturing Company  
P.O. Box 510  
Brownsville, Pennsylvania 15417  
Attn: Secretary

(with a copy to):

Operating Lease Services, Inc.  
c/o Gollust & Tierney, Inc.  
30 Rockefeller Plaza  
Suite 4510  
New York, New York 10020  
Attn: Paul E. Tierney, Jr.

(ii) in the case of the Bank to:

United States Trust Company of New  
York  
45 Wall Street  
New York, New York 10005  
Attn: Mr. Nicholas P. Episcopia

or to such other address as the party giving such notice shall have been advised of in writing for such purpose by the party to which the same is directed.

(f) This Agreement may be assigned by the Borrower as long as no Event of Default then exists or would exist as a result of such assignment and shall be binding upon and inure to the benefit of the Borrower and the Bank, and their respective successors and assigns.

(g) This Agreement and the rights and obligations of the parties hereunder shall be governed by and construed in accordance with the laws of the State of New York; provided, however, that the parties hereto shall be entitled to all rights conferred by 49 U.S.C. §11303.

9. Notwithstanding anything to the contrary contained herein (except as hereinafter in this Section 9

specifically provided) it is understood and agreed that all of the obligations of the Borrower contained herein are non-recourse obligations of the Borrower, may be asserted only against the Collateral (as defined in the Mortgage) and may not be asserted against the Borrower personally (it being understood, however, that, if and to the extent necessary under applicable law in connection with the assertion by the Bank of its rights against the Collateral, the Bank may make assertions against the Borrower but will not under any circumstances, except as set forth below, seek to recover any sum from the Borrower or its assets) or against any incorporator, shareholder, officer or director of the Borrower; provided, however, that the Borrower shall be liable on a recourse basis for any loss or harm suffered by the Bank on account of:

(a) failure to accept the Boxcars in accordance with Section 1(a), in which event the Borrower's liability shall be limited to \$4,000 per Boxcar, or to be responsible for storage and maintenance charges as provided in Section 1(c);

(b) failure to make the \$4,000 payment per Boxcar described in Section 2(a) or to pay Current Interest or Accrued Interest when and if required in accordance with Section 2(b);

(c) any breach of its covenant contained in Section 2(e) or if its representations and warranties contained in Section 3(a) shall prove to have been inaccurate in a material way at the time when made; or

(d) any breach of its covenants contained in Section 7, in which event the Borrower's obligation shall be limited to \$3,000 per Boxcar.

The Borrower may at any time, by written notice to the Bank, elect to become personally liable on a recourse basis for all or a specified portion of the Financed Amount or any other of

its obligations hereunder or under the Mortgage whereupon the portion of the Financed Amount and such other obligations, if any, specified in such notice shall, without further act, immediately and irrevocably become full recourse obligations of the Borrower, enforceable against the Borrower and its assets, anything contained in this Agreement, the Note or the Mortgage to the contrary notwithstanding. In such event the Bank shall endorse on the Note a legend specifying the full or partial recourse nature thereof, and the Borrower shall execute such legend.

10. The obligation of the Bank to proceed with the transactions contemplated hereby shall be subject to the satisfaction of the following conditions precedent (any one or more of which the Bank may, in its sole discretion, waive):

(a) the representations and warranties of the Borrower contained herein shall be true and accurate on the Closing Date and the Bank shall receive a certificate from a responsible officer of the Borrower to such effect;

(b) no Event of Default shall have occurred;

(c) the Mortgage and the Note shall have been duly executed and delivered and the Mortgage shall have been duly filed with the Interstate Commerce Commission;

(d) the Bank shall have received a favorable opinion from the Borrower's counsel, dated the Closing Date, covering such matters as the Bank may reasonably request;

(e) The Bank shall have received title to the Boxcars from the Manufacturer;

(f) The Mortgage shall have been filed with the Interstate Commerce Commission and Uniform Commercial Code financing statements shall have been filed in such states, if any, as are necessary to make true and correct the representation of the Borrower contained in Section

3(a)(vi), which filings the Borrower agrees to make; and

(g) The Borrower, to the extent, if any, required by Section 7 hereof, shall have reimbursed the Bank for any storage, maintenance and insurance charges paid by the Bank with respect to the Boxcars for the period from January 1, 1981 to the Closing Date.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed by their respective officers thereunto duly authorized as of the date first above written.

UNITED STATES TRUST COMPANY OF  
NEW YORK

By \_\_\_\_\_

HILLMAN MANUFACTURING COMPANY

By \_\_\_\_\_

Exhibit B

Boxcar Serial Numbers

NSL 156142 - 156144

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NSL 157110 - 157159

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NSL 151637  
NSL 156145 - 156148  
PICK 081126

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NSL 151722 - 151723  
NSL 151727  
NSL 151741 - 151744  
NSL 151746  
NSL 156125 - 156126  
PICK 209 - 216  
PICK 081121 - 081122  
PT 206099

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NSL 151740  
NSL 151749  
NSL 156127 - 156141

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PICK 96000 - 96018

# Arent, Fox, Kintner, Plotkin & Kahn

Washington Square 1050 Connecticut Avenue, N.W.  
Washington, D.C. 20036-5339

REGISTRATION NO. \_\_\_\_\_ FILED IN

DEC 2 1988 - 3 20 PM

INTERSTATE COMMERCE COMMISSION

Daniel F. Van Horn  
(202) 857-6030

December 1, 1988

Ms. Noreta R. McGee  
Secretary  
Interstate Commerce Commission  
12th Street and Constitution Avenue, N.W.  
Washington, D.C. 20423

Dear Madam:

We hereby request the filing and recordation of a name change for Hillman Securities. The new name is TCC Investments. The railroad cars affected by this change are recorded under number 12968, dated February 27, 1981. The change is effective immediately.

We would appreciate your filing and date stamping this letter and returning it to the undersigned. We understand that no filing fee is required.

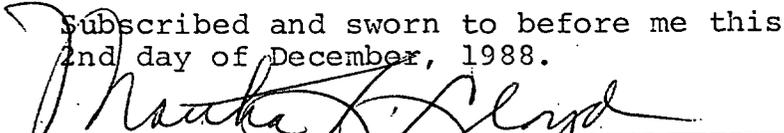
Sincerely,



Daniel F. Van Horn  
Counsel for U.S. Trust

District of Columbia, ss:

Subscribed and sworn to before me this  
2nd day of December, 1988.



Notary Public, D.C.

My Commission Expires: 3/14/89

# Arent, Fox, Kintner, Plotkin & Kahn

Washington Square 1050 Connecticut Avenue, N.W.  
Washington, D.C. 20036-5339

Daniel F. Van Horn  
(202) 857-6030

December 1, 1988

RECORDATION NO. \_\_\_\_\_ FEE \$\_\_\_\_

DEC 2 1988 3 44 PM

INTERSTATE COMMERCE COMMISSION

Ms. Noreta R. McGee  
Secretary  
Interstate Commerce Commission  
12th Street and Constitution Avenue, N.W.  
Washington, D.C. 20423

Dear Madam:

We hereby request the filing and recordation of a name change for Hillman Manufacturing, Inc. The new name is Hillman Securities. The railroad cars affected by this change are recorded under number 12968, dated February 27, 1981. The change is effective immediately.

We would appreciate your filing and date stamping the enclosed letter and returning it to the undersigned. We understand that no filing fee is required.

Sincerely,



Daniel F. Van Horn  
Counsel for U.S. Trust

District of Columbia, ss:

Subscribed and sworn to before me this  
2nd day of December, 1988.

  
Notary Public, D.C.)

My Commission Expires: 8/14/89